

TELECOMMUNICATIONS (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce,
Industry and Technology

Clause

Amendment Proposed

1 By deleting subclause (2) and substituting -

"(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(3) Sections 3, 4, 5, 6, 7 and 10 shall come into operation on a day to be appointed by the Secretary for Commerce, Industry and Technology by notice published in the Gazette.".

New By adding -

"1A. Interpretation

Section 2(1) of the Telecommunications Ordinance (Cap. 106) is amended, in the definition of "carrier licence", by repealing "the Schedule" and substituting "Schedule 1"."

2 By deleting everything before paragraph (b) and substituting -

"2. Guidelines

Section 6D is amended -

(a) in subsection (2) -

(i) in paragraph (a), by
repealing everything after
"方式" and substituting
"(包括發牌準則以及他擬考慮的其
他有關事宜)的指引";

(ii) by adding -

"(aa) subject to
subsection (2A),
specifying the
matters,
including but
not limited to
those listed in
Schedule 2, that
he shall take
into account
before forming
any opinion
under section
7P(1) or (6)(a)
or (b);";

(iii) in paragraph (b) -

(A) by adding "關於"
before "第14(6)(a)條";

(B) by repealing
everything after "問

題" and substituting

"的指引，但該指引的發出須

受第(3)款的規限。";

- (iv) by repealing "就以下事項發出指引" and substituting "發出";".

New By adding -

"2A. Issue of licences

Section 7(4) is amended by repealing "the Schedule" and substituting "Schedule 1".

3 In the proposed section 7P -

- (a) by deleting the heading and substituting -

"Authority may regulate changes in relation to carrier licensees";

- (b) by deleting subsection (1) and substituting -

"(1) Where, after the commencement of this section, there is a change in relation to a carrier licensee -

- (a) subject to subsection (1A), the Authority may conduct such investigation as he considers necessary to enable him to form an opinion as to whether or

not the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market; and

- (b) (where the Authority, after conducting such investigation, forms an opinion that the change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market) the Authority may, by notice in writing served on the licensee, direct the licensee to take such action specified in the notice as the Authority considers necessary to eliminate or avoid any such effect, but the Authority may not issue such direction if the Authority is satisfied that the change has, or is

likely to have, a benefit to the public and that the benefit outweighs any detriment to the public that is, or is likely to be, constituted by any such effect.

(1A) An investigation under subsection (1) (a) may only be commenced within 2 weeks after the change occurs or within 2 weeks after the Authority knows, or ought reasonably to have known, of the change, as the case may be.";

(c) by deleting subsection (2) and substituting -

"(2) The Authority shall, before forming any opinion or issuing any direction under subsection (1) -

(a) give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made under paragraph (a).";

(d) in subsection (3), by deleting everything after "subsection" and substituting "(1) (b),

the action may include the procuring of modifications to the change.";

- (e) in subsection (4), by deleting "(1)" and substituting "(1)(b)";
- (f) by deleting subsection (5) and substituting -
 - "(5) Where there is a proposed change in relation to a carrier licensee, the licensee or any interested person may apply in writing to the Authority for consent to the proposed change.";
- (g) in subsection (6) -
 - (i) in paragraph (a) -
 - (A) by deleting "is of the opinion" and substituting "forms an opinion";
 - (B) by deleting "may decide" and substituting "shall decide";
 - (C) by adding "作出的" after "建議";
 - (ii) in paragraph (b) -
 - (A) by deleting "is of the opinion" and substituting "forms an opinion";
 - (B) in subparagraph (i), by deleting "or" at the end;
 - (C) by deleting subparagraph (ii) and substituting -
 - "(ii) give consent subject to the direction that

the carrier licensee concerned takes the action that the Authority considers necessary to eliminate or avoid any such effect; or

(iii) give consent without issuing a direction under subparagraph (ii) if the Authority is satisfied that the proposed change would have, or be likely to have, a benefit to the public and that the benefit would outweigh any detriment to the public that would be, or would likely to be, constituted by any such effect.";

(D) by adding "作出的" after "建議";

(h) by deleting subsection (7) and substituting -

"(7) The Authority shall, before forming any opinion, making any decision

or issuing any direction under subsection

(6) -

(a) give all carrier licensees and any interested person a reasonable opportunity to make representations to the Authority; and

(b) consider the representations, if any, made under paragraph (a).";

(i) by deleting subsection (8) and substituting -

"(8) The Authority shall, by notice in writing served on the carrier licensee referred to in subsection (5) and (where an interested person makes an application under that subsection) the interested person, inform the licensee and (if applicable) the person of -

(a) the decision made under subsection (6)(a) or (b)(i), (ii) or (iii);

(b) where a decision is made under subsection (6)(b)(ii), the action that the Authority directs the licensee to take.";

- (j) in subsection (9), by deleting everything after "modifications" and substituting "to the proposed change.";
- (k) in subsection (10) -
 - (i) in paragraph (a), by adding "or (b) (iii)" after "(6) (a)";
 - (ii) by deleting "in respect of the change under subsection (1)" and substituting "under subsection (1) (b) in respect of the change";
- (l) by deleting subsection (11) and substituting -
 - "(11) Subject to subsection (11A), the amount of any costs or expenses incurred by the Authority -
 - (a) in making a decision under subsection (6) (a) or (b) (i), (ii) or (iii); or
 - (b) in relation to the processing of an application made under subsection (5),is recoverable as a debt due to the Authority from the carrier licensee, or the interested person, who makes the application under subsection (5).";
- (m) by adding -

"(11A) The amount recoverable under subsection (11) shall not exceed the amount specified in Schedule 3.

(11B) The Authority shall publish -

(a) where he forms any opinion or issues any direction under subsection (1), the opinion or direction; or

(b) where he forms any opinion, makes any decision or issues any direction under subsection (6), the opinion, decision or direction,

in such manner as he considers appropriate.

(11C) The Secretary may by order published in the Gazette amend Schedule 3.";

(n) by deleting subsection (12) and substituting -

"(12) For the purposes of subsections (1) and (5), there is a change in relation to a carrier licensee if -

(a) subject to subsection (12A), a person, either alone or with any

associated person, becomes the beneficial owner or voting controller of more than 15% of the voting shares in the licensee;

(b) a person, either alone or with any associated person, becomes the beneficial owner or voting controller of more than 30% of the voting shares in the licensee; or

(c) a person, either alone or with any associated person

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(i) becomes the beneficial owner or voting controller of more than 50% of the voting shares in the licensee; or

(ii) acquires the power (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of

association or other instrument regulating the licensee or any other corporation or otherwise, to ensure that the affairs of the licensee are conducted in accordance with the wishes of that person.

(12A) Subsection (12) (a) does not apply if the person referred to in that subsection, when becoming the beneficial owner or voting controller of more than 15%, but not more than 30%, of the voting shares in the carrier licensee concerned -

- (a) either alone or with any associated person, is not, or does not concurrently become, the beneficial owner or voting controller of more than 5% of the voting shares in any other carrier licensee; and
- (b) either alone or with any associated person, does not have the power

(including by the holding of voting shares), or does not concurrently acquire the power (including by the acquisition of voting shares), by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating any other carrier licensee or any other corporation or otherwise, to ensure that the affairs of such other carrier licensee are conducted in accordance with the wishes of that person."

(o) in subsection (13) -

(i) in the definition of "表決控權人", by deleting the full stop at the end and substituting a semicolon;

(ii) by adding -

"associated person" (相聯人士),
in relation to a person,
has the meaning assigned
in the definition of

"associated person" in
section 2(1), but -

(a) the references

to "the
licensee" in
that definition
shall be

construed as
references to
the person; and

(b) where the person

is a corporation,
the reference to
"associated
corporation" in
that definition
shall be

construed as a
corporation over
which the person
has control, a
corporation
which has
control over the
person or a
corporation
which is under

the same control
as is the person;

"interested person" (有利害關係的

人) means -

(a) in relation to a
change referred
to in subsection
(1), a person
who does any of
the acts
referred to in
subsection
(12) (a), (b) or
(c) in relation
to the carrier
licensee
concerned;

(b) in relation to a
proposed change
referred to in
subsection (5),
a person who
proposes to do
any of the acts
referred to in
subsection
(12) (a), (b) or

(c) in relation
to the carrier
licensee
concerned;".

- 5 (a) In paragraph (a), by deleting "or (1A)" and substituting ", (1A), (1B) or (1C)".
- (b) In paragraph (b), in the proposed definition of "appeal subject matter", by deleting paragraph (b) and substituting -
- "(b) in relation to an appeal under section 32N(1A), (1B) or (1C), means an opinion, direction or decision of the Authority published under section 7P(11B);".

6 By deleting the clause and substituting -

"6. Appeals to Appeal Board

Section 32N is amended -

(a) by adding -

"(1A) Any carrier licensee aggrieved by an opinion, direction or decision of the Authority published under section 7P(11B) may appeal to the Appeal Board against the opinion, direction or decision (and whether or not the opinion, direction or decision

was formed, issued or made in respect of the licensee).

(1B) Any person who -

(a) is, in relation to a change referred to in section 7P(1), an interested person within the meaning of paragraph (a) of the definition of "interested person" in section 7P(13); and

(b) is aggrieved by an opinion or direction of the Authority published under section 7P(11B)(a) in respect of the change,

may appeal to the Appeal Board against the opinion or direction.

(1C) Any person who -

(a) is, in relation to a proposed change referred to in section 7P(5), an interested person within the meaning of paragraph (b) of the definition of "interested person" in section 7P(13); and

(b) is aggrieved by an opinion, decision or direction of the Authority published under section 7P(11B)(b) in respect of the proposed change,

may appeal to the Appeal Board against the opinion, decision or direction.";

(b) in subsection (3), by adding
"subsection (1A), (1B) or (1C) or"
before "section 36C".

7 By deleting everything after "substituting" and
substituting "", or before the opinion, direction or
decision referred to in section 32N(1A), (1B) or (1C)
was formed, issued or made, as the case may be.".

New By adding -

**"8. Licences which are not carrier licences
within the meaning of section 2**

The Schedule is renumbered as Schedule 1.

9. Schedule 2 added

The following is added -

"SCHEDULE 2 [s. 6D(2)]

MATTERS TO BE TAKEN INTO ACCOUNT BY AUTHORITY

1. The height of barriers to entry to a
telecommunications market.

2. The level of market concentration in a
telecommunications market.

3. The degree of countervailing power in a
telecommunications market.

4. The likelihood that the change would result in the carrier licensee or interested person being able to significantly and substantially increase prices or profit margins.

5. The dynamic characteristics of a telecommunications market, including growth, innovation and product differentiation.

6. The likelihood that the change would result in the removal from a telecommunications market of a vigorous and effective competitor.

7. The extent to which effective competition remains or would remain in a telecommunications market after the change.

8. The nature and extent of vertical integration in a telecommunications market.

9. The actual and potential level of import competition in a telecommunications market.

10. The extent to which substitutes are available in a telecommunications market."

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10. Schedule 3 added

The following is added -

"SCHEDULE 3 [s. 7P]

SPECIFIED AMOUNT

\$200,000."."

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